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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220321
Party	Defendant Primal Nutrition, Inc.
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Submission	Reply in Support of Motion
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Date	09/15/2015
Attachments	Reply to Opposer's Opposition to Motion for Suspension.pdf(301690 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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**IN THE MATTER OF TRADEMARK SERIAL NO. 86/150,072  
PUBLISHED ON December 23, 2014**

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Primal Kitchen, LLC	)	
	)	
Opposer,	)	
	)	
v.	)	<b>Opposition No.: 91220321</b>
	)	
Primal Nutrition, Inc.,	)	
	)	
Applicant.	)	
	)	
	)	

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**REPLY TO OPPOSER'S OPPOSITION TO MOTION FOR SUSPENSION**

Applicant Primal Nutrition, Inc. submits this Reply to Opposer's Opposition to Applicant's Motion for Suspension because the parties are engaged in a civil action that may have a bearing on the case, Primal Nutrition, Inc. v. Primal Kitchen LLC, Case No.: 2:15-cv-06387-CAS-E, filed August 21, 2015 ("Civil Action"). There are no pending motions that are potentially dispositive of the case or any other circumstances that would give the Board concern as to whether suspension of the proceedings is appropriate. For these reasons, the Board may suspend the instant matter until termination of the related civil action.

The Civil Action concerns the same parties and the same issues, namely, likelihood of confusion under Trademark Act Section 2(d). Under the applicable rules and in light of the case law interpreting these rules, suspension in this case is entirely proper. *See* 37 C.F.R. 2.117(a), *Other Tel. Co. v. Connecticut Nat'l Tel. Co.*, 181 USPQ 125, 126-7 (TTAB 1974) (decision in a civil action for infringement and unfair competition would have bearing on outcome of Trademark Action Section 2(d) claim before Board), *pet. denied*, 181 USPQ 779 (Comm'r 1974); *Tokaido v. Honda Asso., Inc.*, 179 USPQ 861, 862 (TTAB 1973); *Whopper-Burger, Inc.*

*v. Burger King Corp.*, 171 USPQ 805, 806-07 (TTAB 1971); *Martin Beverage Co. v. Colita Beverage Corp.*, 169 USPQ 568, 570 (TTAB 1971).

The exception to this rule is where there is a pending dispositive motion or unusual circumstances. In this instance, no exceptions apply.

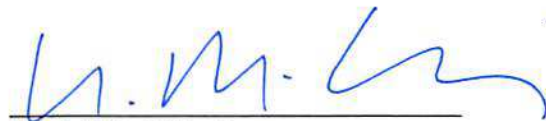
Opposer acknowledged that there are no pending dispositive motions. The crux of its position is that the matter should not be suspended because the parties are engaged in discovery and it would like an opportunity to meet and confer regarding Applicant's answers to Opposer's interrogatories. This argument holds no weight as any discovery issues will be resolved at the Federal Court level under the same rules applicable to discovery in this Board proceeding. Also, Opposer has not cited any rules or case law supporting its position. If this was a "real" issue, Applicant understands that it would have received communications from Opposer, *i.e.*, a phone call, letter, or email; however, Opposer's Opposition was the first notice Applicant received that Opposer would like to meet and confer. Opposer's argument does not rise to the level of a circumstance that would hinder the Board in its decision to suspend.

For the above reasons, it is entirely proper for the Board to grant the Motion to Suspend the instant proceeding in light of the pending Civil Action between the parties.

Respectfully submitted,

CISLO & THOMAS LLP

Dated: September 15, 2015



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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REPLY TO OPPOSER'S OPPOSITION TO MOTION FOR SUSPENSION was served upon Primal Kitchen, by first class mail, postage prepaid, to Applicant's attorney:

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with a copy by electronic mail to erinb@trademarklawyerfirm.com and jj@trademarklawyerfirm.com, on the date given below.

Dated: September 15 2015

  
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